

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DEWAYNE FITZGERALD,

Plaintiff,

v.

STATE COURT OF BIBB COUNTY,

Judge SHARELL F. LEWIS, Sheriff

DAVID DAVIS, Deputy TRAVIS

CARLISLE, District Attorney ANITA

R. HOWARD, Assistant Solicitor

General BRITTANY M. WOOLFOLK,

and Assistant Solicitor General

CHRISTOPHER PITTS,

Defendants.

CASE NO.

5:24-CV-190 (CAR)

ORDER ON MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS ON APPEAL

Before the Court is *pro se* Plaintiff Dewayne Renard Fitzgerald's Motion for Leave to Appeal *In Forma Pauperis* ("IFP") the Court's Order dismissing his Recast Complaint [Doc. 8]. As explained below, Plaintiff's Motion [Doc. 13] is **DENIED**.

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." "[G]ood faith' . . .

must be judged by an objective standard.”¹ A petitioner demonstrates good faith when he seeks review of a non-frivolous issue.² An issue “is frivolous if it is ‘without arguable merit either in law or fact.’”³ “Arguable means being capable of being convincingly argued.”⁴ “In deciding whether an [*in forma pauperis*] appeal is frivolous, a district court determines whether there is ‘a factual and legal basis . . . for the asserted wrong, however inartfully pleaded.’”⁵

Plaintiff seeks to appeal this Court’s dismissal of his Recast Complaint as frivolous. Because Plaintiff proceeded IFP, the Court was required to screen his Complaint and dismiss the complaint or any portion thereof which (1) is found to be frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief.⁶ The Court screened Plaintiff’s original Complaint, found his allegations failed to state a claim for relief, and allowed him an opportunity to amend his Complaint [Doc. 4]. Plaintiff submitted a Recast Complaint, which the Court reviewed and dismissed as legally frivolous and indisputably meritless [Doc. 8]. An appeal of the Court’s Order dismissing Plaintiff’s case

¹ *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

² *Id.*; *Morris v. Ross*, 664 F.2d 1032, 1033 (11th Cir. 1981).

³ *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

⁴ *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (internal quotation marks and citations omitted); *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

⁵ *Sun*, 939 F.2d at 925 (citations omitted).

⁶ 28 U.S.C. § 1915(e)(2)(b).

is without arguable merit either in law or fact. Thus, Plaintiff's appeal is not taken in good faith, and his Motion for Leave to Appeal IFP must be denied.

CONCLUSION

As explained above, Plaintiff's Motion for Leave to Appeal IFP [Doc. 13] is **DENIED**. Any further requests to proceed *in forma pauperis* on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit pursuant to Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED, this 12th day of December, 2024.

s/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT